

ENTERED

October 26, 2018

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

DION DANIEL WYMORE	§ § §	
VS.	§	MISC. ACTION NO. M-18-1526
LORIE DAVIS, Director, Texas Department of Criminal Justice, Correctional Institutions Division.	§ § §	

ORDER ADOPTING REPORT AND RECOMMENDATION

Pending before the Court is Dion Daniel Wymore's application to proceed *in forma pauperis* and petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On September 21, 2018, the Magistrate Court issued the Report and Recommendation, recommending that Petitioner's § 2254 Petition be **DISMISSED** without prejudice, his application to proceed *in forma pauperis* be **DENIED**, and that a Certificate of Appealability be **DENIED** upon the issuance of this Court's final order.

Pursuant to Federal Rule of Civil Procedure 72(b), the Court has reviewed the Report and Recommendation for clear error.¹ Finding no clear error, the Court adopts the Report and Recommendation in its entirety. Accordingly, Petitioner's § 2254 Petition is **DISMISSED** without prejudice and his application to proceed *in forma pauperis* is **DENIED**. A Certificate of Appealability is **DENIED**.

¹ "The advisory committee's note to Rule 72(b) states that, '[w]hen no timely objection is filed, the [district] court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.' " *Douglas v. United States Service Auto. Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996) (quoting Fed. R. Civ. P. 72(b) advisory committee's note (1983)) superseded by statute on other grounds by 28 U.S.C. § 636(b)(1), as stated in *ACS Recovery Servs., Inc. v. Griffin*, No. 11-40446, 2012 WL 1071216, at *7 n.5 (5th Cir. Apr. 2, 2012).

SO ORDERED this 26th day of October, 2018, at McAllen, Texas.


Randy Crane
Randy Crane
United States District Judge